IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 565/2005
(Bhanwar Lal Vs. State of Rajasthan & Anr.)

Date of Order : 26/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. K.R.Saran for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. K.S.Gill for the non-petitioners No. 2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 10.3.2005 passed by Judicial Magistrate, Sardarshahar (for short 'the trial court' hereinafter), in FR Case No.21/05 arising out of FIR No.38/05 whereby the trial court accepted the final report filed by the police on the ground of death of the accused.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that in the first information report, the petitioner complainant has categorically stated that the accident has

occurred due to rash and negligent driving of tractor which was said to have been driven by non-petitioner No.2 Hardatt. During the investigation, Rafique, the driver of the Armada vehicle who himself suffered injuries in the said accident, succumbed to the injuries and therefore, police filed a negative final report. But so far as driver Hardatt is concerned who at the relevant time was driving the tractor rashly and negligently has not been challaned and a final report has been filed.

From the perusal of the order impugned, it is obvious that before accepting the final report, a notice was not served on the complainant. In the circumstances, therefore, the order impugned cannot be sustained and is liable to be set aside.

Consequently, the petition is allowed. The order impugned dated 10.3.2005 passed by Judicial Magistrate, Sardarshahar accepting the final report filed by the police is set aside and the matter is remanded to the trial court to pass a fresh order after service of notice and hearing the petitioner complainant.

(H.R.PANWAR),J.

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